



**GENERAL TERMS AND CONDITIONS FOR USE OF PROOFPOINT PRODUCTS
(APPLIANCE AND SOFTWARE ONLY)**

These General Terms and Conditions ("General Terms") are made as of June 13, 2018 ("Effective Date") between **Proofpoint, Inc.**, a Delaware corporation, with offices at 892 Ross Drive, Sunnyvale, CA 94089 USA ("Proofpoint") and the **State of Oregon, acting by and through the Department of Administrative Services, Procurement Services** ("DAS") on behalf of all State of Oregon agencies, boards and commissions as defined in ORS 174.111 (individually, "Customer" as identified in a Purchase Order).

The purpose of the General Terms is to set forth provisions for the use of Appliance and Software Proofpoint Products by the Customer and its Affiliates. In addition to these General Terms, Customer's purchase and use of Proofpoint Products will be subject to the ordering information (product name, license quantity, subscription term, price, and Customer notice/billing contact and description of any Professional Services) contained in Purchase Order, and also will be subject to the Proofpoint Product Exhibit for each Proofpoint Product purchased by Customer in the form as mutually agreed and executed by Customer and Proofpoint (each, a "Product Exhibit"). In the event of any conflict between these General Terms, each Product Exhibit, SOW (if applicable), and Purchase Order (as defined below), the order of precedence will be the following: the applicable Product Exhibit(s), these General Terms, and then the applicable Purchase Order(s) or SOW; provided, however, in the event of any specific conflict between a Product Exhibit and these General Terms related to the use of a specific corresponding Proofpoint Product, the Product Exhibit shall control solely with respect to the specific Proofpoint Products covered by such Product Exhibit.

State of Oregon, acting by and through the Department of Administrative Services on behalf of Customer	PROOFPOINT, INC.:
<i>Signature:</i> 	<i>Signature:</i>
Individual Signing: [print name] <i>Ginny Beckwith</i>	Individual Signing: [print name] Paul Auvil
Title: <i>Procurement Services Mgr</i>	Title: CFO
Signing Date:	Signing Date: <i>June 13, 2018</i>
DAS PS ADDRESS FOR NOTIFICATIONS: Department of Administrative Services, Procurement Services 1225 Ferry Street SE Salem, Oregon 97301 Attn: _____	PROOFPOINT, INC. ADDRESS FOR NOTIFICATIONS: 892 Ross Drive Sunnyvale, CA 94089 USA Attn: General Counsel
Customer Affiliate Address for Notifications will be set forth in the corresponding Adoption Agreement Approved for legal sufficiency by DOJ 5-24-18	

- 1. **DEFINITIONS.** In the General Terms:
 - 1.1 **"Affiliate"** means, with respect to Proofpoint, any entity which directly or indirectly controls, is controlled by, or is under common control with, such party. "Control," for purposes of this definition, means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity. With respect to the State of Oregon, "Affiliate" means the State of Oregon agencies, boards, and commissions, as defined in Oregon Revised Statute 174.111.
 - 1.2 **Intentionally Omitted**
 - 1.3 **"Appliance(s)"** means a virtual or hardware device containing the Software.

- 1.4 **"Confidential Information"** has the meaning set forth in Section 3.
- 1.5 **"Customer Data"** has the meaning set forth in the applicable Product Exhibit.
- 1.6 **"Documentation"** means the technical description of the Proofpoint Product(s) contained in the then-current Proofpoint Product descriptions made available by Proofpoint to Customer upon license of the Proofpoint Product(s).
- 1.7 **"Extension Term(s)"** means each additional one year (or other agreed upon period) subscription term for which the subscription term for a Proofpoint Product is extended pursuant to Section 8.

1.8 "Initial Term" means the initial subscription term for a Proofpoint Product that is defined on the applicable Purchase Order.

1.9 "License(s)" means the license metric (e.g. type and quantity) identified in the Proofpoint sales quote and/or in the applicable Product Exhibit (which in turn may be referenced in the Purchase Order). Customer needs a License in order to legally use a Proofpoint Product.

1.10 "Personal Data" means data about an identifiable individual that is protected by privacy laws where the individual resides. Examples of personal data include name, religion, gender, financial information, national identifier numbers, health information, online identifiers and location data.

1.11 "Product Exhibit(s)" means the exhibit to these General Terms containing additional terms specific to the Proofpoint Product(s) licensed to Customer.

1.12 "Professional Services" means installation, implementation, data migration/conversion, or training services provided by Proofpoint to Customer.

1.13 "Proofpoint Product(s)" means the Appliance or Software licensed and/or purchased by Customer under a Purchase Order.

1.14 "Purchase Order(s)" means an ordering document for a Proofpoint Product issued by Customer or Reseller that contains at least the following information: product name, license quantity, subscription term, price, Customer notice/billing contact and description of any Professional Services to be provided by Proofpoint.

1.15 "Reseller" means a third-party authorized by Proofpoint to resell Proofpoint Products directly to Customer.

1.16 Intentionally Omitted..

1.17 "Software" means any Proofpoint binary software programs licensed by Proofpoint to Customer, together with all the Software Updates.

1.18 "Software Update(s)" means each Software update and enhancement that Proofpoint generally makes available at no additional charge to its customers who are current in payment of applicable Subscription Fees or otherwise provides to Customer under these General Terms.

1.19 "SOW" means each statement of work, engagement letter or other writing signed by Proofpoint and Customer that describes the Professional Services provided by Proofpoint. Each SOW shall reference these General Terms and will be subject to the terms and conditions hereof. Additionally, a Proofpoint service brief identified in a Purchase Order is also considered an SOW but does not require a separate signature.

1.20 "Subscription Fees" mean the fees paid by Customer for the right to use the applicable subscription-based Proofpoint Products for the Initial Term or Extension Term, as applicable.

1.21 "Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

1.22 "Term" means the Initial Term and any Extension Term applicable to each Purchase Order.

1.23 "Work Product" means all work product developed or created by Proofpoint during the course of providing support or Professional Services to Customer. Notwithstanding anything herein to the contrary, Work Product shall not include any Customer Data (as defined in the applicable Product Exhibit) or Customer Confidential Information.

2. GENERAL LICENSE TERMS

2.1 Subject to the terms of these General Terms and each applicable Product Exhibit, Proofpoint grants to Customer and its Affiliates a worldwide, royalty-free, non-exclusive, time-

limited, non-transferable (except to a successor in interest as permitted hereunder), limited license to access and/or use (as applicable) the Proofpoint Products during the Term in accordance with the Documentation, in the quantities specified in the applicable Purchase Order, and solely for Customer's own internal business purposes. Customer may authorize subcontractors to access and/or use the Proofpoint Products, subject to the number of Licenses authorized by the Purchase Order, provided Customer is jointly and severally liable for all acts and omissions of its agents and subcontractors, subject to applicable law. Customer may use the Documentation in connection with the License granted hereunder.

2.2 Customer specifically agrees to limit the use of the Proofpoint Products to those parameters set forth in the applicable Purchase Order and Product Exhibit. Without limiting the foregoing, Customer specifically agrees not to intentionally: (i) resell, sublicense, lease, time-share or otherwise make a Proofpoint Product (including the Documentation) available to any third party (except subcontractors); (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein (including but not limited to hacking or penetration testing Proofpoint's systems); (iii) modify, copy or create derivative works based on a Proofpoint Product; (iv) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from a Proofpoint Product, in whole or in part; or (v) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface.

2.3 In addition, Customer agrees not to intentionally use a Proofpoint Product, or permit it to be used, for purposes of: (i) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer organization without Proofpoint's prior written consent; (ii) infringement on the intellectual property rights of any third party or any rights of publicity or privacy; (iii) violation of any law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, anti-discrimination, and/or false advertising); (iv) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (v) filing copyright or patent applications that include the Software and/or Documentation or any portion thereof.

2.4 An Affiliate of Customer may purchase/license Proofpoint Products or Professional Services directly from Proofpoint by entering into a direct agreement with Proofpoint whereby such Affiliate would formally adopt the terms and conditions of these General Terms ("**Adoption Agreement**") and sign a specific Product Exhibit for the corresponding Proofpoint Products that such Affiliate is purchasing and/or licensing. By entering into an Adoption Agreement, the Affiliate agrees to be bound by these General Terms and will be considered the "Customer" under these General Terms. Any Affiliate that enters into an Adoption Agreement is liable for its own obligations. Affiliates may not amend, modify or change the terms of these General Terms, except as they specifically apply to their individual Adoption Agreement. The general form of such Adoption Agreement is hereby attached and incorporated to these General Terms as Exhibit B. Each Adoption Agreement creates a separate contract between the individual Customer Affiliate and Proofpoint. Proofpoint shall look solely to the individual Customer Affiliate for any rights and remedies Proofpoint may have at law or in equity arising under any Adoption Agreement between Proofpoint and the individual Customer Affiliate. Proofpoint acknowledges and agrees that DAS is not liable to Proofpoint under any Adoption

Agreement unless DAS is purchasing the Proofpoint Products as the Customer.

3. CONFIDENTIALITY

3.1 As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" or the like, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of these General Terms and other terms reflected in an Purchase Order, the Proofpoint Products, business and marketing plans, technology and technical information, product designs, and business processes. Customer is subject to the Oregon Public Records Law (ORS 192.331 to 192.478), and Proofpoint regards its Products, Documentation, Proofpoint technology and technical information, including product roadmaps, as exempt from disclosure as "trade secrets" under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon. As stated below, Customer will first provide Proofpoint the opportunity to redact confidential portions of these General Terms and any Product Exhibit issued by Customer prior to those records being made publically available, including to third parties who are not under an obligation of confidentiality. If Customer receives from a third party any request under the Oregon Public Records Law for the disclosure of Proofpoint Confidential Information, Customer will notify Proofpoint within a reasonable period of time of the request and provide Proofpoint the opportunity to protect its information from disclosure, including by redaction. Proofpoint is exclusively responsible for defending its position concerning the confidentiality of the requested information.

3.2 "Confidential Information" shall not include information that (i) is or becomes a matter of public knowledge through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to the Receiving Party by a third party that lawfully and rightfully possesses such information without restriction on disclosure; (iv) the Receiving Party can document resulted from its own research and development, independent of receipt of the disclosure from the Disclosing Party; or (v) is disclosed with the prior written approval of the Disclosing Party.

3.3 Receiving Party shall not (i) disclose any Confidential Information of the Disclosing Party to any third party, except as otherwise expressly permitted herein or (ii) use any Confidential Information of Disclosing Party for any purpose outside the scope of these General Terms or in any manner that would constitute a violation of any laws or regulations, including without limitation the export control laws of the United States, except with Disclosing Party's prior written consent. The Receiving Party shall not make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The Receiving Party agrees to hold the Disclosing Party's Confidential Information in confidence and to take all precautions to protect such Confidential Information that the Receiving Party employs with respect to its own Confidential Information of a like nature, but in no case shall the Receiving Party employ less than reasonable precautions. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information. These General Terms will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid

order of a court or other governmental authority; provided, however, to the extent permitted by law, the responding party shall give prompt written notice to the other party to enable the other party to seek a protective order or otherwise prevent or restrict such disclosure and, if disclosed, the scope of such disclosure is limited to the extent possible.

3.4 The Receiving Party will return all copies of the Disclosing Party's Confidential Information upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of these General Terms or the Purchase Order. Instead of returning such Confidential Information, the Receiving Party may destroy all copies of such Confidential Information in its possession; provided, however, the Receiving Party may retain a copy of any Confidential Information disclosed to it solely for archival purposes, provided that such copy is retained in secure storage and held in the strictest confidence for so long as the Confidential Information remains in the possession of the Receiving Party.

3.5 The parties acknowledge and agree that the confidentiality obligations set forth in these General Terms are reasonable and necessary for the protection of the parties' business interests, that irreparable injury may result if such obligations are breached, and that, in the event of any actual or potential breach of Section 3, the non-breaching party may have no adequate remedy at law and shall be entitled to seek injunctive and/or other equitable relief as may be deemed proper by a court of competent jurisdiction.

4. PROTECTION AND USE OF PERSONAL DATA

4.1 Proofpoint will maintain administrative, physical, and technical safeguards for protection of the security and confidentiality of any Personal Data embedded Customer Data, including, but will not be limited to, measures for preventing unauthorized access, use, modification or disclosure of Personal Data. Proofpoint's current data security terms are described on Proofpoint's website at <http://www.proofpoint.com/license>.

4.2 Intentionally Omitted.

4.3 Customer grants a worldwide license to Proofpoint to collect Product Analytics during the term of the Agreement and use the Product Analytics for up to eighteen (18) months after the termination of Agreement, to maintain, improve and enhance the Proofpoint Products. "Product Analytics" means information collected, generated and/or analyzed by the Proofpoint Products such as email header content, log files, statistics, aggregated data and derivatives thereof.

5. OWNERSHIP

5.1 As between the parties, Proofpoint retains all title, intellectual property and other ownership rights throughout the world in and to the Proofpoint Products, Documentation, any Service offering and the Work Product. Proofpoint hereby grants to Customer a non-exclusive, non-transferable, fully paid up, license to use the Work Product in connection with the Proofpoint Product licensed under these General Terms and solely for Customer's internal business purposes. Professional Services (and any resulting Work Product) are specific to the Proofpoint Products and are not provided on a "work made for hire" basis. Customer retains all title, intellectual property and other ownership rights in all Customer Data, Customer Confidential Information and all data, text, files, output, programs, information, or other information and material that Customer provides, develops, or makes available or uses in conjunction with any Proofpoint Product or Service offering.

5.2 There are no implied rights and all rights not expressly granted herein are reserved. No license, right or interest in any Proofpoint trademark, copyright, patent, trade

name or service mark is granted hereunder. Customer shall not remove from any full or partial copies made by Customer of the Software, Software Updates and Documentation any copyright or other proprietary notice contained in or on the original, as delivered to Customer.

5.3 Each party acknowledges that the Proofpoint Products contain valuable trade secrets and proprietary information of Proofpoint, that in the event of any actual or threatened breach of the scope of any of the licenses granted hereunder, such breach shall constitute immediate, irreparable harm to Proofpoint for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach in addition to whatever remedies Proofpoint might have at law or under this Agreement.

6. FEES, PAYMENT AND REPORTING

6.1 Fees. Fees for the Proofpoint Products will be the Subscription Fees and other fees set forth in the Purchase Orders (collectively, the "Fees"). The Fees stated in each Purchase Order shall be effective during the Initial Term specified in that Purchase Order; the Subscription Fees and other fees for each Extension Term shall be defined in the applicable Purchase Order or, in the absence of any such terms regarding Fees for Extension Terms, by mutual agreement of the parties.

6.2 Taxes. Customer will be liable for payment of all Taxes that are levied upon and related to the performance of obligations or exercise of rights under the Purchase Order, if any. Proofpoint may be required to collect and remit Taxes from Customer, unless Customer provides Proofpoint with a valid tax exemption certificate. In no event will either party be responsible for any taxes levied against the other party's net income.

6.3 Payment. Customer payments to Reseller or Proofpoint (if any) are subject to ORS 293.462. Unless otherwise agreed between Customer and Reseller, all Fees due under a Purchase Order shall be due and payable within thirty (30) days of receipt of invoice. Except as otherwise expressly permitted herein, all Fees owed pursuant to a Purchase Order are non-cancellable and non-refundable for the Term. Any payment not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) interest at the lesser of either: (a) the rate of 2/3 of a percent (0.67%) of the outstanding balance per month; (b) the maximum rate permitted by law forty-five (45) days from the date such payment was due until the date paid. Proofpoint may decline to make any shipments of Proofpoint Products to Customer, or an individual Customer Affiliate as applicable if, in Proofpoint's reasonable opinion, circumstances exist which raise doubt as to that Customer's ability or willingness to pay as provided herein. Failure to make timely payment may result in immediate termination of access to the Proofpoint Products for the individual Customer. Upon default by an individual Customer, Proofpoint will have all remedies available at law or in equity against such individual Customer. No refunds will be made except as expressly provided for under warranties and intellectual property indemnity for the applicable Proofpoint Product.

6.4 Disputed Invoices. Customer shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach agreement with respect to such disputed amounts, and such withholding of disputed amounts shall not be deemed a breach of these General Terms nor shall any interest be paid thereon. In such case, Customer shall promptly (and in no event more than ten (10) business days from receipt of invoice) provide written notice to

the Reseller or Proofpoint, as applicable, of any such dispute prior to withholding such payment, specifying in reasonable detail the nature of the dispute and the amount withheld, and shall pay all undisputed amounts set forth on such invoice in accordance with this Section. Customer and Reseller or Proofpoint, as applicable, will negotiate in good faith to attempt to resolve such disputes within thirty (30) days of submission of such dispute by Customer.

6.5 License True-Up. Customer shall monitor and report its actual usage of the subscription-based Proofpoint Products based on the applicable Licenses and inform Proofpoint by email at accountsreceivable@proofpoint.com of the then current actual count ("License Count") upon the occurrence of the following events: (i) on or before any increase in the License Count equal or greater than ten percent (10%) of the then current licensed License Count and (ii) on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce an actual License Count for verification by Customer. If such number exceeds the License Count for which Customer has paid Subscription Fees ("Base License Count") by more than five percent (5%), then Customer shall pay Reseller or Proofpoint, as applicable, for each License beyond the Base License Count from the time such License was activated through the remainder of the Initial Term or Extension Term, as applicable. If such number exceeds the Base License Count by five percent (5%) or less, then Customer shall pay Reseller or Proofpoint, as applicable, for each License beyond the Base License Count from the reporting date of the count through the remainder of the Initial Term or Extension Term, as applicable.

7. SUPPORT AND PROFESSIONAL SERVICES

7.1 Proofpoint shall provide support provided Customer is current in payment of the applicable Fees and any additional fees for platinum or premium support, if applicable. Proofpoint's current support terms are described on Proofpoint's website at <http://www.proofpoint.com/license>.

7.2 Proofpoint shall provide the Professional Services, if any, specified in one or more SOWs. All Professional Services shall be billed as stated in the applicable SOW, and Customer agrees that, if Customer has not used the Professional Services within one (1) year of paying for such Professional Services, then Proofpoint has no further obligations and Customer shall not be entitled to a refund except as: (a) set forth expressly in the applicable SOW; or (b) otherwise mutually agreed to by the parties.

7.3 Proofpoint warrants it will provide Professional Services in a professional and workmanlike manner consistent with good industry standards and practices. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will use reasonable efforts to re-perform the Professional Services or, if Proofpoint is unable to do so, terminate the applicable SOW and refund that portion of any Fees paid to Proofpoint or Reseller that correspond to the allegedly defective Professional Services.

7.4 Travel and Expenses. Customer will not pay or reimburse any expenses incurred by Proofpoint that exceed the maximum guideline in ORS Policy, attached hereto as Exhibit A, Oregon Travel Policy.

8. TERMINATION AND EXPIRATION

8.1 Either party may terminate the General Terms or Product Exhibit (i) immediately upon written notice if the other party commits a non-remediable material breach; or (ii) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach,

unless such breach is for non-payment and then within five (5) days of such notice.

8.2 Either party may terminate the General Terms and each Product Exhibit immediately by written notice if no Purchase Order is in effect.

8.3 On termination or expiration of the General Terms, all Software licenses and Service access granted under these General Terms shall automatically terminate with immediate effect.

8.4 Unless otherwise set forth in the applicable Product Exhibit or Purchase Order, the Initial Term applicable to each Purchase Order (including follow-on orders) commences on the later of: (i) the date Proofpoint ships a production Appliance to Customer, (ii) the date that Proofpoint processes the applicable Purchase Order issued to Proofpoint by Customer or the Reseller as applicable with respect to any Proofpoint Product that Proofpoint has previously delivered, or provided access, to Customer for purposes of evaluation, or (iii) for all other Proofpoint Product orders, the date Proofpoint sends to Customer an email indicating that the Proofpoint Products are available for use (to the extent each of the foregoing applies to Customer's engagement). At least ninety (90) days prior to the end of the relevant subscription term the parties will discuss options to renew such subscription term.

8.5 In the event of the termination or expiration of these General Terms, the provisions of these General Terms which by their nature extend beyond the expiration or termination of these General Terms shall survive, including but not limited to Sections 2.2 ("License Restrictions"); 3 ("Confidentiality"); 5 ("Ownership"); 6 ("Fees, Payment and Reporting"); 8 ("Termination and Expiration"); 11 ("Limitation of Liability"); and 12 ("General") ; and any accrued rights to payment shall remain in effect beyond such termination or expiration until fulfilled.

8.6 Nothing in these General Terms, including this Section 8, may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

9. INTELLECTUAL PROPERTY INDEMNITY

9.1 Indemnity. Subject to Section 9.3 below, Proofpoint agrees to defend and indemnify Customer from and against any third party claim filed against Customer in the United States alleging that the Proofpoint Product(s), as sold and delivered to Customer pursuant to the Purchase Order and these General Terms (the "Indemnified Products"), directly infringe the valid intellectual property rights of a third party (a "Claim"). Proofpoint agrees to pay any amounts finally awarded by a court of law in respect of such Claim or pursuant to its signed settlement. Proofpoint may, at its sole election and expense: (a) procure sufficient rights to allow Customer continued use and exploitation of the Indemnified Products under the terms of these General Terms; (b) replace or modify the Indemnified Products to avoid the alleged infringement; or (c) if the foregoing options are not reasonably practicable, terminate Customer's rights to use the Indemnified Products and refund all amounts paid by Customer to Proofpoint attributable to Customers' future usage or access to the Indemnified Products.

9.2 Exclusions. Proofpoint shall have no obligation or any liability to Customer for any Claim arising out of or related to: (a) modification or adaptation to the Indemnified Products; (b) the use of the Indemnified Products in combination with any other product, service or device, if the Claim would have been avoided by the use of the Indemnified Products without such other product, service or device; (c) compliance with Customer's specifications, instructions, functions, features or

requirements, or any customization of an Indemnified Product made for or on behalf of Customer; (d) use or exploitation of the Indemnified Products other than as set forth in these General Terms or applicable Proofpoint Documentation; or (e) failure to implement any update, modification, or replacement to Indemnified Products as provided by Proofpoint.

9.3 Process. Proofpoint's obligations under this Section 9 are conditioned upon the following: (a) Customer first providing written notice of the Claim to Proofpoint within thirty (30) days after Customer becomes aware of or reasonably should have been aware of the Claim (provided, however, the failure to provide such notice will only relieve Proofpoint of its indemnity obligations hereunder to the extent Proofpoint is prejudiced thereby); (b) Customer tendering sole and exclusive control of the Claim to Proofpoint at the time Customer provides written notice of such Claim to Proofpoint, and (c) Customer providing reasonable assistance, cooperation and required information with respect to defense and/or settlement of the Claim, including Customer providing Proofpoint with access to documents and personnel at Proofpoint's request and expense. Customer may at its sole expense participate in the Claim, except that Proofpoint will retain sole control of the defense and/or settlement. Proofpoint shall not agree to any settlement of a Claim that includes an injunction against Customer or admits Customer liability without Customer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

9.4 The foregoing is the sole and exclusive remedy of Customer and the entire liability of Proofpoint with respect to any Claim.

9.5 These General Terms are subject to and governed by the laws of State of Oregon, including ORS 180.060 and ORS 180.140. Customer represents that this means that neither Proofpoint nor any attorney engaged by Proofpoint will defend a claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor settle any claim on behalf of the State of Oregon without the approval of the Attorney General.

10. WARRANTIES, REMEDIES AND DISCLAIMERS

10.1 DAS, each Customer Affiliate, and Proofpoint each represents and warrants that (i) it has the legal power to enter into and perform under these General Terms; and (ii) it shall comply with all applicable laws in its performance hereunder.

10.2 Warranties specific to each Proofpoint Product shall be set forth in an applicable Product Exhibit, executed by both parties.

10.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE AND IN EACH PRODUCT EXHIBIT, PROOFPOINT AND PROOFPOINT LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES OF REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE GENERAL TERMS. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER.

11. LIMITATION OF LIABILITY

11.1 EXCEPT FOR (i) PROOFPOINT'S INDEMNIFICATION OBLIGATIONS; (ii) DAMAGES RESULTING FROM PROOFPOINT'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT; (iii) DAMAGES RESULTING FROM PROOFPOINT'S MATERIAL BREACH OF SECTION 3 (CONFIDENTIALITY); (iv) PROOFPOINT'S AGGREGATE LIABILITY UNDER THESE GENERAL TERMS SHALL IN NO EVENT EXCEED THE ANNUALIZED SUBSCRIPTION FEES PAID FOR THE APPLICABLE PROOFPOINT PRODUCT.

11.2 EXCEPT FOR (i) DAMAGES RESULTING FROM A PARTY'S MATERIAL BREACH OF SECTION 3 (CONFIDENTIALITY) OR (ii) CUSTOMER'S BREACH OF SECTION 2 ("GENERAL LICENSE TERMS"), IN NO EVENT SHALL ANY PARTY OR ITS LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER PARTIES OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA NOT WITHIN PROOFPOINT'S CUSTODIAL POSSESSION OR CONTROL, OR CAUSED BY UNFORSEEABLE CIRCUMSTANCES, BUSINESS INTERRUPTION, OR OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR IN CONNECTION WITH THESE GENERAL TERMS, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3 THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

11.4 Nothing in these General Terms may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DAS' or Customer's liabilities and obligations to Proofpoint, including any obligation to indemnify or hold Proofpoint harmless against claims brought by third parties, is subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

12. GENERAL

12.1 Government End-User Notice. This Section shall apply only if Customer is a federal government entity. The Proofpoint Products are deemed commercially available hosted services and commercial computer software as defined in FAR 12.212 (Software) and/or commercially available technical data as defined in FAR 12.211 (Technical Data), and are subject to Proofpoint's commercial licensing/use terms, as required by and FAR 52.227-19 (Commercial Computer Licensed Software – Restricted Rights) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in these General Terms.

12.2 Publicity. Neither party may issue press releases or otherwise publicize the parties' relationship without the other party's prior written consent, which shall not be unreasonably withheld.

12.3 Independent Contractors; Relationship with Third Parties. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created

hereby. There are no third-party beneficiaries to these General Terms.

12.4 Notices. All notices shall be in writing to each party's address on the signature page of these General Terms or the applicable Purchase Order (or as updated by a party in writing to the other) and effective upon receipt.

12.5 Entire Agreement; Integration. These General Terms, the Product Exhibit and the Purchase Order/SOW constitute the entire agreement of the parties and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No amendment or waiver of any provision of these General Terms shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, any Purchase Order issued by Customer or Reseller shall be deemed a convenient order and payment device only and no terms (other than product name, license quantity, price, subscription term, and billing contact) stated in any Purchase Order shall be incorporated into these General Terms.

12.6 Waiver. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of these General Terms is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

12.7 Force Majeure. No party shall be liable to the other parties for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

12.8 Assignment. No party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other parties (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign these General Terms in its entirety (including all Product Exhibits hereunder), without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party.

12.9 Export Restrictions. The parties agree to comply with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Proofpoint Products and Proofpoint Confidential Information and any media, to assure that the Proofpoint Products, Proofpoint Confidential Information and media are not exported, imported or used in violation of law or applicable regulation.

12.10 Applicable Law. These General Terms will be governed by the laws of the State of Oregon and the United States of America, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

12.11 Counterparts. These General Terms and each Product Exhibit may be executed by facsimile and in counterparts.

12.12 Headings; Language. All headings used herein are for convenience of reference only and will not in any way affect the interpretation hereof. The English language version of these General Terms controls. It is the express wish of both

parties that this Agreement, and any associated documentation, be written and signed in English.

Exhibit A

**to PROOFPOINT
GENERAL TERMS AND CONDITIONS FOR
APPLIANCE AND SOFTWARE PURCHASES**

Oregon Travel Policy

Travel and Expenses. Customer will not pay or reimburse any expenses incurred by Proofpoint except as authorized in advance. Any such authorized travel expenses must comply with the Oregon Travel Policy,
<http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>

Exhibit B
Form Adoption Agreement

Adoption Agreement

This Agreement to Adopt the General Terms and Conditions ("*Agreement*") is entered into as of the date of last signature below ("*Effective Date*") by and between **Proofpoint, Inc.**, a Delaware corporation with offices at 892 Ross Drive, Sunnyvale, CA 94089 ("*Proofpoint*") and _____ with offices at _____ ("*Customer*").

RECITALS

WHEREAS, the State of Oregon, acting by and through the Department of Administrative Services, Procurement Services ("*Original Entity*") and Proofpoint entered into that certain General Terms and Conditions as of the date of _____, which governs the Original Entity's license and use of Proofpoint's products and services (the "*Original Agreement*", attached hereto as **Exhibit A**);

WHEREAS, the Customer is a State of Oregon agency, board, or commission; and

WHEREAS, Proofpoint and Customer desire to enter into terms and conditions identical to those of the Original Agreement, as amended hereunder, in order for Proofpoint to provide Proofpoint products and services to Customer.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Customer and Proofpoint hereby agree to adopt and be bound by all the terms and conditions of the Original Agreement, with "_____" replacing "State of Oregon, acting by and through the Department of Administrative Services, Procurement Services" as the Customer.
- For the purposes of notice, the parties hereby agree that the below addresses shall apply:

To Proofpoint:
 Proofpoint, Inc.
 892 Ross Drive
 Sunnyvale, CA 94089
 Attention: General Counsel

To Customer:

- Each party hereto and the persons signing below warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their respective authorized representatives as of the Effective Date.

Customer: _____

Proofpoint, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A
Original Agreement